

This letter discusses an out-of-state combination retailer/contractor installation of qualifying building materials into an Illinois enterprise zone. See 86 Ill. Adm. Code 130.1951. (This is a GIL.)

April 17, 2006

Dear Xxxxx:

This letter is in response to your letter dated December 5, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We are requesting a General Information Letter as to whether the tangible personal property we would furnish and install post August 6, 2002, on a building located in an Illinois Enterprise Zone is exempt from Illinois Use Tax under the following facts and circumstances:

1. ABC is located out of Illinois and all tangible personal property purchases are made out of Illinois.
2. ABC is a dual operator sales/use tax taxpayer which fabricates structural steel and either (1) sells at retail or (2) furnishes and installs the steel under a building construction contract wherein ABC is a subcontractor to the Owner or General Contractor. Currently all building materials are purchased from our vendors under a resale certificate because of our dual operator status and we self assess the Illinois Use Tax on those building construction jobs where we furnish and install the structural steel.
3. ABC has a contract to furnish and install structural steel, post August 6, 2002, on a building located in an Illinois Enterprise Zone.
4. ABC receives a properly executed CERTIFICATION OF ELIGIBILITY FOR SALES TAX EXEMPTION from the administrator of the Illinois Enterprise Zone.

ABC personnel have received conflicting information from discussions held with several people in the Illinois Department of Revenue and other tax experts regarding the applicability of use tax to ABC in the Illinois Enterprise Zone situation described above.

Some tax experts have told ABC that we do not purchase materials at retail because we buy all materials under a resale certificate and that the resale certificate removes any sale at retail designation.

Furthermore, since there is no sale at retail as required by the Enterprise Zone regulations, we would not be exempt from Illinois Sales Tax on purchases of materials that we would install on a building located in an enterprise zone. Additionally, materials we would remove from our inventory to be installed by us on a building located in an enterprise zone would be subject to use tax because these transactions are not sales at retail as required by the regulations and there is nothing in the enterprise zone regulations that deal with use tax applicability to enterprise zone exemptions. Rather the regulations deal with retailers and deductions from sales at retail. Therefore, any materials removed from inventory are subject to use tax as these are not sales at retail transactions.

On the other hand other tax experts have told ABC that our removal of construction materials from our own inventory for installation by us on a building located in an Illinois Enterprise Zone should not be subject to Illinois use tax if these same materials would be exempt from Illinois sales tax had we sold them at retail. According to theses [sic] tax experts, the sales tax regulations are mirrored in the use tax regulations. 86 Illinois Adm. Code 150, Section 150.101 c seems to support this view as it reads as follows:

"However, if the seller of tangible personal property for use would not be taxable under the Retailers' Occupation Tax Act despite all the elements of the sale occurring in Illinois, then the tax imposed by the Use Tax Act shall not apply to the use of such tangible personal property in Illinois."

Additionally, these other tax experts have told ABC that any out of Illinois purchases we make of tangible personal property for installation in a building located in an Illinois Enterprise Zone are exempt from use tax as long as we have a properly executed CERTIFICATION OF ELIGIBILITY FOR SALES TAX EXEMPTION and a contract or other evidence that the materials were in fact purchased for installation in the exempt building.

End of initial question.

A second question that we have is based on the results of the above taxability question.

If ABC is not subject to Illinois Use Tax on either out of Illinois purchase of construction materials or removal of construction materials from our inventory for use on buildings located in an Illinois enterprise zone as described above, then what are the requirements, if any, in regard to the Purchaser's Sales Tax Exemption Statement? Because ABC 's purchases are made out of Illinois and made under a resale certificate, there appears to be no purpose in issuing this statement to our vendors. Should ABC issue this statement to itself for inventory issues or is the use of the statement not required in our particular situation?

The third and final question is whether the answers to the two questions above would change if any of the materials were purchased in Illinois.

Please call should you need further information.

We will appreciate any assistance you can provide to us.

## **DEPARTMENT'S RESPONSE:**

Effective August 6, 2002, there is no requirement that the retailer be located in a municipality or county that created the enterprise zone into which the materials will be incorporated, and the restrictions on the deduction contained in the ordinance in effect at the retailer's location no longer control the sale. Rather, the purchaser must obtain a Certificate of Eligibility for Sales Tax Exemption from the administrator of the enterprise zone into which the materials will be incorporated. See 86 Ill. Adm. Code 130.1951(d).

You have inquired about a situation in which you are a combination retailer/contractor located outside the State of Illinois. In general, contractors in Illinois incur Use Tax on the cost price of materials incorporated into real estate located in Illinois. However, a construction contractor purchasing building materials from the out-of-state retailer incurs no Illinois use tax liability on his cost price of those materials if he incorporates them into real estate located in an Illinois enterprise zone if the purchases otherwise meet the requirements of Section 130.1951(d).

Normally, the purchaser must provide a copy of the Certificate of Eligibility to the retailer along with the purchaser's own certification that the materials will be incorporated into the building project identified in the Certificate of Eligibility for Sales Tax Exemption. However, since you are acting as both the retailer and contractor, you would be required to maintain among your books and records a copy of the Certificate of Eligibility for Sales Tax Exemption from the administrator of the enterprise zone into which the materials will be incorporated; and any other evidence which will show that the materials were removed from your inventory and were installed in the enterprise zone building project.

If the qualifying building materials are purchased from an Illinois retailer, you are required to provide the retailer with a copy of the Certificate of Eligibility for Sales Tax Exemption from the administrator of the enterprise zone into which the materials will be incorporated and a purchaser's certification containing the following:

- i) a statement that the building materials being purchased are being purchased for incorporation into real estate located in an Illinois enterprise zone,
- ii) the location or address of that real estate,
- iii) the name of the enterprise zone in which that real estate is located,
- iv) a description of the building materials being purchased for incorporation into that real estate,
- v) the date of the purchase, and
- vi) the purchaser's signature.

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess  
Associate Counsel

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